

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

_____)	
In the Matter of)	
)	
Qwest Communications International Inc.)	
)	
PETITION FOR FORBEARANCE)	WC Docket No. 05-294
From Enforcement Of The Commission's)	
Circuit-Conversion Rules As They Apply)	
To Post-Merger Verizon/MCI and)	
SBC/AT&T)	
)	
(Petition for Forbearance Under 47 U.S.C.)	
§ 160(c)))	
)	
_____)	

VERIZON¹ COMMENTS

In its Petition for Forbearance, Qwest recognizes that the Commission's rules allowing carriers to convert special access circuits to UNEs provides the wrong incentives to carriers deciding whether to deploy their own facilities. Nonetheless, Qwest argues that as long as the Commission's circuit conversion rules remain in effect, the Commission should not require Qwest to comply with these rules with respect to circuit conversion requests from Verizon or its affiliates. But as Verizon explains below, so long as and to the extent that the Commission does allow conversions, the rules must apply equally to all carriers.

¹ The Verizon telephone companies ("Verizon") are identified in Attachment A to these comments.

ARGUMENT

Verizon, along with Qwest, has appealed the Commission's determination to allow carriers that are already successfully using special access services to compete for customers to convert those circuits to UNEs. As the Petitioners demonstrated on appeal, the Commission's decision to allow these circuit conversions is contrary to the Act and to the D.C. Circuit Court's directives in *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004). Qwest continues to maintain its appellate position that the Commission's circuit conversion rules are unlawful, but argues that, so long as those rules remain in place, selected companies should not be able to take advantage of them. *See* Qwest Pet. at 11 - 12. That argument is untenable.

First, Section 10(a)(1) of the Act allows the Commission to forbear from applying a Commission rule or regulation to a telecommunications carrier or telecommunications service only if it will not result in practices that are "unjustly or unreasonably discriminatory" 47 U.S.C. § 160(a)(1). Qwest itself concedes that not requiring Qwest to convert Verizon's special access circuits to UNEs would result in differential treatment of Verizon. Qwest Pet. at 33. But it argues that forbearance would not rise to the level of unreasonable discrimination because Verizon is not similarly situated to other carriers. In particular, it claims, based on a number of factors including Verizon's resources, special access inventories, facilities deployment, and purchasing power, that Verizon is not impaired without access to UNEs. But this argument is inconsistent with the Commission's impairment standard and, therefore, provides no basis for the Commission to forbear from requiring Qwest to honor any circuit conversion requests solely from Verizon or its affiliates.

In its *Triennial Review Remand Order*, the Commission expressly rejected proposals that it should determine impairment based on a specific carrier's business plans or the individualized circumstances of a particular carrier. *Unbundled Access to Network Elements*, 20 FCC Rcd 2533, ¶¶ 24-26 (2005) ("*Triennial Review Remand Order*"). Instead, the Commission confirmed that in assessing impairment, it assumes a reasonably efficient competitor and considers "whether entry is economic by a hypothetical competitor acting reasonably efficiently." *Id.* at ¶ 26. Here, the factors relied upon by Qwest at most would go to show that Verizon is able to operate, in the Commission's words, "reasonably efficiently." And while Qwest's arguments may go to whether the Commission's impairment determination was well founded in the first instance, they provide no basis to treat Verizon or its affiliates differently from other carriers once that determination has been made.

Second, Qwest's Petition is merely a request for a carve-out from the circuit-conversion rules with respect to one or two carriers. There is, however, no rational basis artificially to disadvantage Verizon in competing with other carriers who could still convert existing special access circuits to UNEs, and would merely create new regulatory disparities among supposed different classes of CLECs. To the extent the Commission continues to allow carriers to convert existing special access circuits to UNEs, the rules must apply equally to all carriers.

Third, Qwest's attempt to justify this disparity are unavailing. Qwest tries to justify unequal treatment for Verizon by pointing to certain alleged competitive harms Qwest claims will occur if Verizon or its affiliates is allowed to convert their existing special access circuits to UNEs. These speculative claims largely are a reprise of Qwest arguments the Commission already considered and rejected when it approved Verizon's acquisition of MCI.

a. The Commission has already considered and rejected Qwest's claim that the combination of Verizon and MCI will allow Verizon, along with AT&T, to dominate the enterprise market. Based on information Verizon and MCI provided about their internal business operations as well as third-party studies that provided market share data about carriers serving the markets where Verizon and MCI competed, the Commission concluded that, "although there is evidence that horizontal concentration will increase as a result of the merger, this increase is not likely to result in anticompetitive effects, given the large number of competitors already participating in this market and the high level of customers sophistication for mid-sized and larger enterprise customers." *See Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, FCC 05-184, 37 Comm. Reg. (P&F) 416, ¶ 65 (2005) ("*Verizon and MCI Applications*").

b. The Commission also considered and rejected Qwest's claims that Verizon and AT&T would tacitly collude not to compete in each other's territories. *Id.* at ¶ 80. The Commission found it "highly unlikely that the companies would engage in mutual forbearance with respect to large national enterprise customers, given the significant revenue opportunities associated with serving those customers," and that there would be sufficient competition based on the competitors that remain in the market. *Id.*

c. Qwest argues that without forbearance, Verizon will use the Commission's rules requiring ILECs, including Qwest, to convert special access circuits to UNEs as a threat to prevent Qwest from competing for enterprise customers in Verizon's territory. In essence, Qwest argues that it might choose not to compete in Verizon's region if Verizon can compete with it on the same terms. This, of course, is just a variation on the argument that Verizon and

the combined SBC and AT&T would choose not to compete in one another's local service areas, an argument that the Commission already rejected. *Verizon and MCI Applications* at ¶ 80.

In any event, even aside from that fact, the reality is that Qwest is already competing extensively to serve customers in Verizon's territory using both its own facilities as well as Verizon's special access services. Based on Verizon's collocation records, Qwest has deployed facilities in [BEGIN CLEC PROPRIETARY] [END CLEC PROPRIETARY] Verizon central offices. In addition, as of November 2005, Qwest had in service with Verizon [BEGIN CLEC PROPRIETARY] [END CLEC PROPRIETARY] special access circuits from Verizon. As a result, Verizon expects to receive approximately [BEGIN PROPRIETARY] [END PROPRIETARY] in special access revenue from Qwest for 2005 alone. Furthermore, as the chart below indicates, these numbers have grown steadily since 2000, with Qwest's DS1 purchases tripling and its DS3 purchases nearly doubling over the last five years.

[BEGIN CLEC PROPRIETARY]

Service Type	2000	2001	2002	2003	2004

Source: Qwest/Verizon National Special Access Performance Report

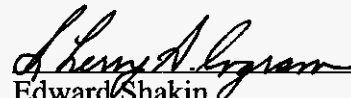
[END CLEC PROPRIETARY]

REDACTED FOR PUBLIC INSPECTION

In short, Qwest already competes extensively to serve customers in Verizon's local service areas and there is no serious reason to believe that it will stop.

Respectfully submitted:

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THE VERIZON TELEPHONE COMPANIES

The local exchange carriers affiliated with Verizon Communications Inc. are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

On Jan. 6, 2006, MCI, Inc. became an indirect wholly owned subsidiary of Verizon Communications Inc. MCI, through its operating subsidiaries, provides enhanced services and local, long-distance, and other telecommunications services domestically and internationally.